HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.522 of 2007

Between:

Jahazi Mazdoor Union (Regd.),
Rep. by its Vice-President, Visakhapatnam

... Appellant

And

The Commissioner of Labour,
Government of Andhra Pradesh,
Hyderabad and others

... Respondents

Counsel for the appellant: Shri P. Sridhar for
Shri V. Hari Haran.

::JUDGMENT::

June 25, 2007

Per G.S. Singhvi, CJ

Whether the management of Dredging Corporation of India Limited (respondent No.3 herein) could resort to verification of the membership of the unions through check-off system for the purpose of recognizing majority union and whether the learned Single Judge committed an error by refusing to nullify the recognition of respondent No.4 is the question which arises for determination in this appeal filed under Clause 15 of the Letters Patent.

The appellant is a registered trade union of the Dock-yard workers and employees. Its area of operation is throughout India including Visakhapatnam where respondent No.3 is carrying out its activities. Respondent No.4 is also a registered trade union representing non-executive employees employed in the services of respondent No.3. In the years 1986 and 1991, the management of respondent No.3 granted recognition to the majority union by undertaking verification of membership through check-off system. In February 2002, the same system was again adopted and the appellant was recognized because majority of the employees were found to be its members. In February, 2004, respondent No.4 represented to the Commissioner of Labour, Government of Andhra Pradesh (respondent No.1) to conduct fresh verification for determining majority in accordance with the Code of Discipline. Respondent No.1 appointed Deputy Commissioner of Labour and Verification Officer, Visakhapatnam (respondent No.2 herein) for undertaking that exercise. The latter issued notice dated 23.4.2005 to the appellant and respondent No.4 to produce the records and registers maintained as per the statutory provisions. While respondent No.4 submitted the relevant records, the appellant failed to do so despite reminder. Therefore, respondent No.2 eliminated the appellant from the process of verification and submitted report with the finding that majority of the employees were members of respondent No.4 and, on that basis, the management of respondent No.3 recognised respondent No.4 as the majority union.

The appellant questioned the recognition of respondent No.4 in Writ Petition No.22611 of 2005 by contending that the methodology adopted by respondent No.2 for verification of membership is legally impermissible and that he should have conducted election by secret ballot for verification of the majority. Another plea taken by the appellant was that the verification done by respondent No.2 was wholly arbitrary because the officer concerned did not examine the

relevant records. The appellant relied on the order passed by this Court in Writ Petition No.8977 of 2001 and pleaded that respondent No.2 should have verified the membership by secret ballot.

The case set up by respondent Nos.2 and 4 was that the verification of membership was done through check-off system in accordance with the Code of Discipline and the writ petitioner (the appellant herein) cannot complain against the same because it was recognized in 2002 by adopting the same method.

The learned Single Judge held that the methodology adopted by respondent No.2 for verification of membership is consistent with the Code of Discipline and the writ petitioner is not entitled to complain against the same. The learned Single Judge noted that in compliance of notice issued by respondent No.2, respondent No.4 had produced the records, but the writ petitioner did not furnish the registers and other records and held that the latter's grievance against recognition of respondent No.4 was unwarranted. The learned Single Judge also took cognizance of the figures incorporated in the counter-affidavits and observed:

> "It is clear from the counter-affidavit that in check-off system for the purpose of the verification of majority union, subscriptions being deduced by the management every month from the salaries of the employees will be verified. Accordingly, the management of the 3rd respondent Corporation was requested to furnish the list of subscriptions for the last six months i.e., from October, 2004 to March, 2005 and on verification of the same as well as the muster roll, it was noticed that 251 employees were working in the 3rd respondent Corporation and out of them, 175 were working in the Head Office at Visakhapatnam and 76 were working in Project Offices at Delhi, Calcutta and other places. Out of 251, it was found that 129 employees were paying monthly subscription of Rs.10/- to the 3rd respondent Corporation and 115 employees were paying monthly subscription to the petitioner union and 7 employees were not subscribing to any of the unions. Thus, the 4th respondent union was having majority of 14 employees as per the subscriptions paid by the employees under the check-off system. Accordingly, the 4th respondent union was recommended for recognition as majority union by the Verification Officer and on the basis of the same, the

1st respondent declared the 4th respondent union as the majority union in 3rd respondent Corporation.

Having regard to the above undisputed facts explained in the counter-affidavit of the 2nd respondent, it is clear that the verification was properly conducted through check-off system as provided under the Code of Discipline. It is not in dispute that even during the previous years, the verification was conducted only through check-off system and as a matter of fact the petitioner union was declared as the majority union in the year 2002 only through check-off system. Hence, the contention of the petitioner that the 1st respondent ought to have conducted a secret ballot election for verification of the majority union is without any substance and was rightly rejected by the respondents 1 and 2. It is also clear that the petitioner was served with notices and was afforded reasonable opportunity to produce the relevant records and registers, but it failed to do so. At any rate, since the verification was made by the 2nd respondent on the basis of the subscription list submitted by the management maintaining transparency, it cannot be said that the petitioner was prejudiced in any manner."

The learned Single Judge also rejected the appellant's plea against eviction from the office room provided by the management by observing that once respondent No.4 was declared as the majority union, the writ petitioner lost its right to continue to occupy the office room.

We have heard learned counsel for the appellant and scrutinised the record. In our opinion, there is no merit in the appellant's plea that the methodology adopted by respondent No.2 for verification of membership of the unions through check-off system is illegal and the consequential action by respondent No.3 to accord recognition to respondent No.4 as majority union is liable to be annulled. It is neither the pleaded case of the appellant nor the learned counsel could show that the check-off system is contrary to any constitutional or statutory provision. Rather, he had to concede that the said method is in consonance with the provisions contained in the Code of Discipline. He also admitted that in the year 2002, the appellant union was recognized as majority union by undertaking verification through check-off system. Therefore, we do not find any

infirmity in the verification of membership of the unions done by respondent No.2.

The facts brought before the Court shows that in response to notice dated 23-4-2005 issued by respondent No.2, the appellant did not produce the relevant records and registers to establish that majority of employees were its members. Therefore, the finding recorded by respondent No.2, which is based on evaluation of the documents produced by respondent No.4 that the latter had the majority cannot be declared as vitiated by an error of law apparent on the face of the record. As a corollary, we hold that the learned Single Judge did not commit any error by declining to entertain the appellant's prayer for quashing the recognition of respondent No.4 as majority union.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1008 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

June 25, 2007

C.V. NAGARJUNA REDDY, J

svs